

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF OCTOBER 7 AND 8, 2008
South Lake Tahoe**

ITEM: 4

SUBJECT: Resolution Waiving Waste Discharge Requirements for Vegetation Management Activities Regulated by the TRPA and Authorizing the Lahontan Water Board's Executive Officer to Enter into a Memorandum of Understanding with the TRPA.

CHRONOLOGY: February 2007: Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest and Vegetation Management Activities in the Lahontan Region, Board Order No. R6T-2007-0008.

ISSUES:

- a) Should the Water Board adopt a resolution that: (1) waives the filing of a report of waste discharge and waste discharge requirements for discharges associated with vegetation management activities in the Lake Tahoe Region that are effectively regulated by the TRPA; (2) authorizes the Executive Officer to enter into a Memorandum of Understanding (MOU) with the Executive Director of the TRPA, and (3) certifies the associated Negative Declaration which analyzes the potential environmental effects of implementing the MOU and waiver?
- b) Are the conditions set forth in the proposed waiver and MOU sufficient to ensure that projects implemented under the MOU will not adversely affect water quality?

DISCUSSION: Background

The Water Board and the TRPA are both responsible for protecting water quality and beneficial uses of waters of the State within the Lake Tahoe Region. In fulfilling its responsibilities, the Water Board has developed and implemented a program for regulating timber harvest and vegetation management activities through a waiver of waste discharge requirements related to timber harvest and vegetation management activities. The Timber Waiver applies to projects throughout the Lahontan Region, including the Lake Tahoe Region.

Likewise, the TRPA regulates vegetation management activities in the Lake Tahoe Region through a tree removal permitting system

and memoranda of understanding with land management agencies and fire districts. The programs of the Water Board and the TRPA focus on ensuring impacts to water quality are avoided, that beneficial uses of waters of the State are protected, and that all feasible mitigation measures are implemented. The vegetation management permitting systems of the Water Board and the TRPA are duplicative in that they implement and enforce the same or similar regulations and prohibitions. Under the current regulatory approach, project proponents must have approval from both agencies, typically under a Timber Waiver (Water Board), and as an exempt or qualified exempt project or under a tree removal permit (TRPA).

In May 2008, following review of the *California-Nevada Tahoe Basin Fire Commission Report*, Governor Schwarzenegger issued a Proclamation regarding current forest fuels and regulatory conditions in the Lake Tahoe Region after the Angora fire. The Proclamation found that certain actions should be implemented to streamline and improve the planning and regulatory process for fuels management. Therefore, the Water Board and the TRPA are proposing this cooperative MOU approach to simplify the existing regulatory system of permitting fuel reduction projects in the Lake Tahoe Region.

Project Description

The MOU will designate the TRPA as the lead agency for permitting, review, and enforcement for vegetation management activities in the Lake Tahoe Region, with certain conditions. The TRPA has the independent legal mandate and statutory authority to perform these functions, as described in the proposed resolution (findings 7 and 8). The Water Board is not delegating or transferring any authority to the TRPA, as this is not possible under the Water Code.

The waiver and MOU are conditional, in that projects must be effectively regulated by the TRPA, including issuing permits as appropriate, conducting inspections, and taking enforcement action as necessary to ensure compliance with permits and applicable regulations. Further, the waiver and MOU do not limit the authority of either agency to ensure compliance with its environmental standards or to take enforcement action.

Additionally, the MOU contains several safeguards to ensure that it is effective in meeting its objectives. These safeguards include:

- notification requirements if a third party violates the term of any permit or project authorization
- consultation "triggers" for more complex activities that may benefit from interagency communication
- yearly information exchange regarding the projects that each agency has authorized to proceed under the MOU
- twice-yearly communication, training, and technical review to discuss any problems, issues or opportunities encountered during the administration and implementation of the MOU

These safeguards provide opportunities for adaptive management and communication necessary to ensure the objectives of the MOU are met, and that projects are effectively regulated under the waiver and MOU.

The MOU and waiver of waste discharge requirements identify three situations under which the Water Board may become a permitting agency. These are: (1) if a project proponent submits its application to the Water Board in lieu of the TRPA; (2) if the TRPA requests that the Water Board assume responsibility for permitting a project (typically due to staff resources or project complexity); or (3) when the Water Board believes it is necessary to ensure protection of water quality. While the Water Board does not anticipate being a permitting agency, these provisions are included to give project proponents alternatives, to ensure projects are not delayed due to resource limitations by permitting entities, and to be transparent that the Water Board is not relinquishing its statutory authority to protect water quality.

RECOMMENDATION:

- 1) Certify the Negative Declaration, and
- 2) Adopt the resolution as proposed

ENCLOSURES:

1. Resolution
2. Memorandum of Understanding
3. CEQA Initial Study
4. Negative Declaration
5. Public and Agency Comment Letters:
 - a) Tahoe Basin Fire Chiefs
 - b) California Department of Forestry and Fire Protection
 - c) California Board of Forestry and Fire Protection
 - d) US Forest Service – Lake Tahoe Basin Management Unit
 - e) Sierra Forest Legacy, Sierra Club, League to Save Lake Tahoe including exhibits 1- 13
 - f) US Environmental Protection Agency
6. Water Board Staff Responses to Comments